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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 ANGEL TORRES,

8 Petitioner,

Case No. 2:16-cv-00443-GMN-CWH

9 v.

ORDER

10 DWIGHT NEVEN, et al.,

11 Respondents.

12 This *pro se* habeas petition comes before the Court on petitioner's motion to stay
13 proceedings pending appeal (ECF No. 46) and a motion to stay and abey pursuant to *Rhines v.*
14 *Weber*, 544 U.S. 269 (2005) (ECF No. 48).

15 Petitioner's motion to stay pending appeal is moot because petitioner's appeal has been
16 dismissed for lack of jurisdiction. (*See* ECF Nos. 47 & 49). The motion to stay pending appeal
17 will therefore be denied as moot.

18 Turning to petitioner's motion to stay and abey, stay and abeyance is a procedure that
19 allows a petitioner to stay a federal habeas petition to exhaust any unexhausted claims in state
20 court. There are no unexhausted claims in the operative petition in this case. While petitioner has
21 sought leave to amend his petition to include unexhausted claims, the Court has denied him leave
22 to do so, initially and on reconsideration. Nothing in the motion to stay persuades the Court that
23 it should reconsider its prior decisions in this respect. As there are no claims that are or will be
24 before the Court that are unexhausted, there is no reason for a stay, and the motion to stay and abey
25 will therefore be denied.

26 As to petitioner's contention that his proposed amended petition and ongoing state court
27 petition allege actual innocence, which could excuse the procedural default of some of his claims,

1 this also does not justify entry of a stay. Petitioner could have raised actual innocence in response
2 to the procedural default argument in the motion to dismiss but failed to do so. (See ECF No. 19).
3 Petitioner's belated assertion of actual innocence is not a basis for further delaying these
4 proceedings.

5 In accordance with the foregoing, IT IS THEREFORE ORDERED that petitioner's motion
6 to stay (ECF No. 46) is DENIED AS MOOT.

7 IT IS FURTHER ORDERED that the motion to stay and abey (ECF No. 48) is DENIED.

8 IT IS SO ORDERED.

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10 DATED THIS 2 day of November, 2018.

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13 GLORIA M. NAVARRO
14 UNITED STATES DISTRICT JUDGE
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